RECENT CASE NOTES

ADMINISTRATIVE LAW—POWER OF ALIEN PROPERTY CUSTODIAN—COURT WILL NOT ENJOIN HIS SEIZURE OF PROPERTY AS ENEMY OWNED.—The plaintiff, a friendly alien engaged in the insurance business, brought a bill in equity to enjoin the trustee of a fund established for the security of the plaintiff's American policy holders from paying over to the Alien Property Custodian pursuant to his demand certain funds found by the Custodian to be the property of an alien enemy, not licensed by the President. Motion was made for an injunction *pendente lite*. *Held,* that the motion be denied and the bill dismissed. *Salamandra Ins. Co. v. New York Life Ins. etc. Co.* (1918, U. S. D. C., S. D. N. Y.) 60 N. Y. L. J., Jan. 3, 1919.

The state of war justifies the seizure not only of enemy persons, but of enemy owned private property. *Brown v. United States* (1814, U. S.) 8 Cranch 110; *Miller v. United States* (1870, U. S.) 11 Wall. 268. But in modern times this has merely involved sequestration, not confiscation, of the property, the purpose being to prevent its use for the benefit of the enemy in arms. See COMMENTS, *supra,* p. 478. In the instant case, a Russian insurance company had relieved its former general agents, German subjects in Germany, from the power of doing business in America and had transferred the American agency to an American firm. This firm had set aside from premiums received a certain sum whose ownership was in issue. The Custodian deemed it to be the property of the German general agents and demanded its surrender. The Court seemed inclined to consider it the property of the Russian Company, but nevertheless refused to enjoin its surrender to the Custodian, on the ground that the Trading with the Enemy Act (sec. 9) made the Custodian's determination of ownership unreviewable judicially, except in proceedings following and not preceding the transfer of possession to him. This seems in accord with principle. To enjoin the Custodian might defeat the purposes of the Act, which were of the utmost public importance. See *In re Kastner & Co., Ltd.* (1917, Eng. Ch.) 33 Times L. R. 149. The position of the enemy arrested under Presidential warrant or of the tax payer whose property is distrained for non-payment of taxes is analogous. To enjoin the marshal or the tax collector would defeat the purposes of government. The arrested alien can try the legality of the governmental act in *habeas corpus* proceedings, the tax payer in an action at law against the collector. *Pittsburg, etc. Ry. v. Board of Public Works of West Virginia* (1898) 172 U. S. 92, 19 Sup. Ct. 90. Probably the sale of sequestered property might be enjoined, as incidental to proceedings under the Act to determine ownership. Inasmuch as the seizure and sale of enemy property is derived from the power to kill the enemy, it is somewhat doubtful, as a matter of international law, whether such power of sale survives the armistice; or whether it constitutes a belligerent necessity under the power "of disposition to the limits of the necessity" sanctioned in *Miller v. United States, supra.*

CONFLICT OF LAWS—STATUTE OF LIMITATIONS—ACTION BARRED UNDER STATUTE OF FORUM.—In an action brought in Italy on an English contract the defendant pleaded the Italian statute of limitations in bar to the action. The plaintiff replied that the English statute governed and that this statute had not yet run. *Held,* that the enforcement of the English statute of limitations would violate the public policy of the forum and conflict therefore with Art. 12 of the

Preliminary Provisions of the Italian Civil Code. *Sala v. Model* (1916, App. Milan) *2 Rivista di Diritto Commerciale,* 1916, 896.

See COMMENTS, p. 492.

CONSTITUTIONAL LAW—ADMIRALTY—STATE STATUTE OF FRAUDS NOT APPLICABLE TO MARITIME CONTRACT.—In a libel in admiralty in the United States District Court the claimant alleged an oral contract entered into in California with the owner of a vessel, to proceed to Alaska with the vessel and after arrival there to serve one year as master. One of the defenses was that the California Statute of Frauds rendered the alleged contract unenforcible since it was not to be performed within a year. *Held,* that the contract was of a maritime character and not subject to the California statute. *Union Fish Co. v. Erickson* (1919) 39 Sup. Ct. 112.

Art. 3, sec. 2, of the Federal Constitution extends the judicial power of the United States "to all cases of admiralty and maritime jurisdiction." The effect of this grant upon the powers of the states to determine the legal consequences which shall attach to maritime transactions within their borders is even today in doubt. In some cases the federal district courts, which by congressional enactment "have exclusive, original cognizance of all civil cases of admiralty and maritime jurisdiction, . . . saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it," have applied common law principles unknown to the maritime law in giving relief, and this has been sanctioned by the Supreme Court. *Atlantic Transport Co. v. Imbrovek* (1913) 234 U. S. 52, 34 Sup. Ct. 733 (libel by stevedore *in personam* against the master for personal injuries suffered while loading a ship). So also the Supreme Court has recognized that a state statute may lay down the rule for the decision of a maritime case in the federal courts. *Peyroux v. Howard* (1833) 7 Pet. 324 (libel *in rem* against vessel allowed where state statute gave lien when none existed according to the general maritime law); *The Lottawanna* (1874) 21 Wall. 558 (lien for repairs on vessel in home port); *The Hamilton* (1907) 207 U. S. 398, 28 Sup. Ct. 133 (state statute giving damages for wrongful death). See also *La Bourgogne* (1908) 210 U. S. 95, 28 Sup. Ct. 664, and note in L. R. A. 1916A 1157. On the other hand we find cases refusing to apply the state law—common or statutory. *Workman v. Mayor of New York* (1900) 179 U. S. 552, 21 Sup. Ct. 212 (refusing to apply rule of the common law of the state where the injury happened, which exempted a municipal corporation from the operation of the principle of *respondeat superior* in the case of the city fire department); *The Roanoke* (1903) 189 U. S. 185, 23 Sup. Ct. 491 (state law cannot create lien for materials used in repairing a foreign ship). The attempt to reconcile these and other more or less similar cases led to the unfortunate "five to four" decision in *Southern Pacific Railway Co. v. Jensen* (1917) 244 U. S. 205, 37 Sup. Ct. 525, commented upon in (1917) 27 YALE LAW JOURNAL, 255. The immediate effect of that decision was to prevent the application to maritime injuries of state laws providing for workmen's compensation, even in the state courts. Congress has attempted to remedy this by a recent statute. See *Cimmino v. John T. Clark & Son* (1918, App. Div.) 172 N. Y. Supp. 478, discussed in (1918) 28 YALE LAW JOURNAL, 281. The general principle laid down in the opinion of the majority in the *Jensen* case—to the effect that state legislation is invalid "if it works material prejudice to the characteristic features of the general maritime law or interferes with the proper harmony or uniformity of that law in its international or interstate relations"—was cited in the present case in support of the conclusion reached. It is indeed difficult to reconcile all the decisions with this general principle, and it is still true, as Mr. Justice McReynolds remarked in the *Jensen*